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Comment

The Status of the Crusade to Eradicate Female Genital Mutilation: A Comparative Analysis of Laws and Programs in the United States and Egypt

Elizabeth A. Syer*

John F. Kennedy once said, “[O]ur progress as a nation can be no swifter than our progress in education. The human mind is our fundamental resource.”¹ This notion still holds true today. Throughout the course of history, education has proven to be an explosive technique in battling against human rights violations.² Female Genital Mutilation (hereinafter “FGM”) or female circumcision is a battle that must be fought using education as its cannon,³ only then will this cruel and

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1. John F. Kennedy, *reprinted in Folio Quotations*, 56 IEA REPORTER 1 (FALL 2001) available at <http://www.idahoea.org/happenings/F2001%20-%20Folio%20Quotations.html> (last visited 11/3/02).

2. See ANIKA RAHMAN AND NAHID TOUBIA, FEMALE GENITAL MUTILATION: A GUIDE TO LAWS AND POLICIES WORLDWIDE 68-69 (2001) [hereinafter *Toubia*].

3. *Id.*

tortuous practice be eradicated.⁴ This comment will explore the various methods used in order to rid FGM in Egypt and the United States. Particularly, the analysis will concentrate on the extensive legislation and educational efforts used to purge Egypt and the United States of FGM.

I. History and Explanation of FGM

Female Genital Mutilation, or FGM, has a long history of practice, particularly in African and Middle Eastern countries.⁵ FGM's extensive history predates the rise of Christianity and Islam.⁶ The deep history of FGM has contributed to the problem many countries have had in eradication FGM because people continue to believe that FGM has religious and social implications.⁷ Typically, the procedure is performed on young women at the age of, or right before the age of, puberty.⁸ The following is an excerpt of an interview with an FGM victim. Hannah Koroma's account of her experience with FGM in Sierra Leone is very typical of the FGM experience.⁹

I was genitally mutilated at the age of ten. I was told by my late grandmother that they were taking me down to the river to perform a certain ceremony and afterwards I would be given a lot of food to eat. As an innocent child, I was led like a sheep to be slaughtered.

Once I entered the secret bush, I was taken to a very dark room and undressed. I was blindfolded and stripped naked. I was then carried by two strong women to the site for the operation. I was forced to lie flat on my back by strong women, two holding tight to each leg. Another woman sat on my chest to prevent my upper body from moving. A piece of cloth was forced in my mouth to stop me from screaming. I was then shaved.

When the operation began, I put up a big fight. The pain was terrible and unbearable. During this fight, I was badly cut and lost blood. All those who took part in the operation were half-drunk with alcohol. Others were dancing and singing, and worst of all, had stripped naked.

I was genitally mutilated with a blunt penknife. After the operation,

4. *See id.*

5. *Id.* at 6.

6. Frequently Asked Questions about Female Genital Mutilation, *United Nations Population Fund* available at http://www.unfpa.org/gender/faq_fg.htm (last visited 4/3/04) [hereinafter *Questions*].

7. *Toubia, supra* note 2, at 5-9.

8. *Questions, supra* note 6.

9. *See id.*

no one was allowed to aid me to walk. . . . Sometimes I had to force myself not to urinate for fear of the terrible pain. I was not given any anesthetic in the operation to reduce my pain, nor any antibiotics . . . afterwards, I hemorrhaged and became anemic. . . . I suffered for a long time from acute vaginal infections.¹⁰

Millions of women have undergone FGM in their lifetimes.¹¹ However, there is hope. Many countries have passed laws prohibiting the practice of FGM.¹² The criminalization of the practice is not enough; there must be educational programs established to inform people of the many health risks and legal consequences of FGM.

One of the most fundamental reasons FGM is performed is to control women's sexuality.¹³ In some countries, particularly Egypt, FGM is seen as a way to protect a woman's virginity until she is married. In other countries, FGM is performed to curtail a woman's sexual desires so that she is not too demanding on her husband sexually, enabling him to have many wives.¹⁴ Moreover, some people believe that FGM should be performed for religious reasons.¹⁵ However, neither Christianity nor

10. What is Female Genital Mutilation?, *Amnesty International*, available at <http://www.amnesty.org/ailib/intcam/femgen/fgm1.htm#a12> (last visited 11/3/02) [hereinafter *Koroma*] personal account of Hannah Koroma, Sierra Leone.

11. *Demographic and Health Surveys: Female Genital Cutting*, Macro International Inc. available at <http://www.measuredhs.com> (last visited 4/3/04) [hereinafter *DHS*]; *Estimated prevalence rates for FGM, updated May 2001*, World Health Organization at <http://www.who.int/docstore/frh-whd/FGM/FGM%20prev%20update.html> (last visited 4/3/04) [hereinafter *EPR*].

Most reliable estimates: national surveys		
Country	Prevalence (%)	Year
Burkina Faso	72	1998/99
Central African Republic	43	1994/95
Cote d'Ivoire	43	1994
Egypt	97	1995
Eritrea	95	1995
Guinea	99	1999
Kenya	38	1998
Mali	94	1995/96
Niger	5	1998
Somalia	96-100	1982-93
Sudan	89	1989/90
Tanzania	18	1996
Togo	12	1996
Yemen	23	1997

12. *Toubia*, *supra* note 2, at 9-13.

13. *Id.* at 5.

14. *Id.* at 5-6.

15. *Questions*, *supra* note 6.

Islam condones the practice of FGM and usually FGM is performed more often for cultural reasons than religious reasons.¹⁶

Although FGM has an extensive history, the public at large is not familiar with what the procedure entails. In particular, there are four different ways in which FGM can be performed.¹⁷ Type one, often referred to as a "clitoridectomy,"¹⁸ involves the cutting of all or part of a woman's clitoris. Type two, excision, involves the removal of the clitoris and a partial or total removal of a woman's labia minora.¹⁹ Type three, infibulation, involves the removal of all of a woman's peripheral genitalia, leaving only a small vaginal opening, with the rest of the genitalia stitched. Type four, the most invasive and heinous, involves the burning, pricking or piercing of the clitoris, scouring of the vaginal tissue²⁰ and the "introduction of corrosive substances or herbs into the vagina to cause bleeding or to tighten the opening."²¹ Types one and two are the most common forms of FGM and it is unknown exactly how many women undergo or have undergone types three and four each year.²²

II. Steps taken to Eradicate Female Genital Mutilation: United States

In 1996, the United States became the second country in the world to make FGM illegal.²³ The law provides that any person "who knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both."²⁴ In addition, Congress also addressed the problem financially. In 1996 Congress passed a law that permitted the Secretary of the Treasury to instruct certain executive directors of international financial institutions, "to use the voice and vote of the United States to oppose any loan . . ."²⁵ to any country, "other than to address basic human needs, . . ."²⁶ who had not taken steps to, "implement educational programs designed to prevent the practice of female genital mutilation."²⁷ This law was directed toward any country

16. *Id.*

17. *Koroma, supra* note 9.

18. *Toubia, supra* note 2, at 7.

19. *Id.* at 8; *Questions, supra* note 6.

20. *Id.*

21. *Questions, supra* note 6.

22. *Id.*

23. Marcia Coyle, *They Shouldn't be Done*, NAT'L L.J. (May 1996).

24. 18 U.S.C.A § 116 (1996).

25. *Id.*

26. *Id.*

27. *Id.*

that the Secretary of the Treasury had determined “has, as a cultural custom, a known history of the practice of female genital mutilation.”²⁸ Although Congress took steps to criminalize FGM in the United States and to use its financial stronghold against the world, the statute itself is weak.

A. Criminalization

Benjamin Franklin once said, “Laws too gentle are seldom obeyed. . . .”²⁹ If this is true, then laws that are too weak are seldom enforced. When congress criminalized FGM, they overlooked the fact that the statute only applies to people who perform FGM on women who are under the age of 18.³⁰ There are many women, in this day and age, over the age of 18 who have the procedure because many women do not have the procedure performed until they marry, and many marry after 18, leaving an entire section of women at risk. In 1990, the Commission for Disease Control (hereinafter “CDC”) conducted a study to determine how many women in the United States were in danger of undergoing FGM.³¹ Of all the women in the United States, under the age of 18, there were 168,000 women who were genitally mutilated or who were at risk of being genitally mutilated.³² However, no study was performed detailing the number of women at risk over the age of 18 who were at risk.

In the United States, FGM is a practice that is performed in the back rooms and barns of many families.³³ FGM is not a procedure that is performed in a hospital, by a physician; it is a procedure that is performed in secret; therefore, it is very hard to catch those who perform FGM. Making FGM illegal in the United States was a step forward; however, no one has ever been prosecuted in the United States since the law was enacted.³⁴ The United States should follow the lead of France. In 1999, France, who criminalized FGM in 1984, tried a Malian woman for the circumcision of 48 girls.³⁵ At the end of the highly publicized

28. *Id.*

29. BENJAMIN FRANKLIN, POOR RICHARD’S ALMANAC, available at <http://www.quotedb.com/quotes/1011> (last visited 4/3/04).

30. 18 U.S.C.A. § 116 (1996).

31. W.K. Jones, J. Smith, B. Kieke, Jr, and L. Wilcox, *Female genital mutilation. Female circumcision. Who is at risk in the U.S.?* PUBLIC HEALTH REP. 112: 368-377 (1998) [hereinafter *Public Health Report*].

32. *Id.*

33. See *Questions*, *supra* note 6.

34. *Toubia*, *supra* note 2, at 237.

35. Hermine Fuerst-Garcia, *Mariatou and Her Sisters: The Story behind a Precedent-Setting Court Case*, (on file with author).

trial, the defendant was sentenced to eight years in jail.³⁶

In 1996, when Congress passed 22 U.S.C. § 262k-2,³⁷ many wondered how the law would take shape, and if the law would affect international loans. The statute, however, has many loopholes.³⁸ Congress limited the power of the statute by stating that loans could be given to countries, which have a known history of FGM, if the loan is to address "basic human needs."³⁹ This condition allows the directors of international financial institutions to justify almost any loan. Countries can easily claim that a loan was made to address a basic human need.⁴⁰

In combination with § 262k-2, Congress passed 42 U.S.C. § 241.⁴¹ Section 241 directs the Secretary of Health and Human Services to, "compile data on the number of females living in the United States who have been subjected to female genital mutilation,"⁴² "identify communities in the United States that practice female genital mutilation, and design and carry out outreach activities to educate,"⁴³ "develop recommendations"⁴⁴ for medical students concerning FGM and the complications that can develop from the practice of FGM.⁴⁵ However, even medical centers in our region have not yet received information from the Department of Health detailing the information specified in § 262k-2.⁴⁶ Hershey Medical School's public relations office has been waiting on the information from the Department of Health since § 262k-2 was passed.⁴⁷ However, Dr. Virginia Hall of Hershey Medical Center thinks the information for the medical students is not the most urgent information needed.⁴⁸ In a telephone interview, she stated that, "Until we teach them [people who practice FGM] this practice is wrong, we will not make any progress. . . . This practice subjugates women."⁴⁹

B. *Education in the United States*

Criminalization can only go so far in the battle to eradicate the

36. *Id.*

37. 22 U.S.C. § 262k-2 (1996).

38. *See id.*

39. *Id.*

40. *See note 73.*

41. 42 U.S.C. § 42 (1996).

42. 42 U.S.C. § 241 (b)(1) (1996).

43. 42 U.S.C. § 241 (b)(2) (1996).

44. 42 U.S.C. § 241 (b)(3) (1996).

45. *Id.*

46. Telephone Interview with Hershey Medical School's Public Relations Office, in Hershey, PA. (January 9, 2003) [hereinafter *Interview*].

47. *Id.*

48. Telephone Interview with Virginia Hall, M.D., Hershey Medical School, in Hershey, PA. (January 15, 2003).

49. *Id.*

practice of FGM. Because the U.S. has never prosecuted anyone under the criminal statute,⁵⁰ it has become increasingly important to educate those individuals who perform FGM and undergo FGM. As part of the Immigration Reform and Immigrant Responsibility Act of 1996,⁵¹ Congress required the Immigration and Naturalization Service (hereinafter "INS") to distribute information (i.e. a Notice) to those immigrants entering the United States from countries with high prevalence rates for FGM.⁵² Congress has identified twenty-eight countries that have high prevalence rates.⁵³ Among them is Egypt a country which this comment will address in later sections. Congress has also mandated that the Notice should be provided in English or any predominant written language of the countries identified.⁵⁴

The Notice offers information on FGM, including what the practice consists of and how it is performed.⁵⁵ In addition, the Notice identifies the health problems and "serious effects"⁵⁶ that FGM has on women's health. The side effects listed include "immediate complications . . . pain, shock, hemorrhage, urine retention, ulceration of the genital region, and injury to the adjacent tissue."⁵⁷ The Notice goes on to detail the long-term effects of FGM: "cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, painful intercourse, and sexual dysfunction."⁵⁸ Although the Notice lists these side effects, how affective is the Notice as deterring FGM? How many times do people walk past flyers and Notices without reading them?

In addition, the Notice details the illegality of performing FGM in the United States.⁵⁹ The Notice states that it is illegal to perform FGM in the United States.⁶⁰ Nevertheless, the Notice does not list the legal consequences of performing FGM in the United States. How effective can the Notice be if consequences are not listed? Moreover, the Notice informs victims of FGM that they have no special visa eligibility rights in the United States.⁶¹ Consequently, the Notice seems to say that the

50. *Toubia, supra* note 2, at 237.

51. 63 F.R. 13433 (1998).

52. *Toubia, supra* note 2, at 238; 63 FR 13433 (1998).

53. 63 FR 13433 (1998). The countries included are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Djibouti, Egypt, Ethiopia, Eritria, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, Zaire (Congo).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. 63 F.R. § 13433 (1998).

60. *Id.*

61. *Id.*

United States recognizes FGM as a horrible procedure, but doesn't have enough sympathy to offer immediate relief from FGM, like asylum.⁶²

The Notice also serves as an educational tool to those people immigrating to the U.S. on immigrant and non-immigrant visas.⁶³ The Notice is given out in a packet of materials to every incoming immigrant, buried under other information.⁶⁴ Although admirable the Notice was created, the functionality of the Notice is inadequate.

C. *International Economy*

The third step the United States has taken to eradicate FGM involves influencing the international economy.⁶⁵ When Congress enacted the 22 U.S.C § 262K-2, the statute was aspirational. However, the statute has not made a tremendous impact.⁶⁶ Although § 262k-2 requires the "executive director of each international financial institution [to] . . . use the voice and vote of the United States to oppose any loan"⁶⁷ to a country who has not taken steps to eradicate the procedure, the

62. *Id.* What is Female Genital Mutilation (FGM)? Female genital mutilation is the removal or infibulation (or both) of the whole or part of the clitoris, labia minora, and labia majora. The procedure can include sewing the vagina almost completely closed after the genitals are removed. The procedure is common in certain cultures among various ethnic groups and across many religions.

What are the health problems associated with FGM? The World Health Organization and other United Nations organizations, as well as the United States Government, recognize that FGM has very serious effects on the health of women and girls. Immediate complications of FGM include severe pain, shock, hemorrhage, urine retention, ulceration of the genital region, and injury to the adjacent tissue. Hemorrhage and infection can cause death.

Long-term consequences of FGM include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, painful intercourse, and sexual dysfunction. The most extreme forms of FGM can cause infertility, and may also cause an increase in the risk of stillbirths and maternal deaths.

Psychological consequences of FGM in childhood can include behavior disturbances and loss of trust and confidence in caregivers. As adults, these women may suffer feelings of incompleteness, anxiety, depression, chronic irritability, and frigidity, and may experience marital conflicts.

What are the legal consequences of performing FGM in the United States? The United States is among those countries that have made FGM illegal because of the dangerous health problems associated with it . . . there is no exception for performing FGM because of a belief that is required as a matter of custom or ritual. . . .

Will Victims of FGM be eligible for a visa to come to the United States? The fact that a person has been subjected to FGM will have no effect on the victim's eligibility for a visa to the United States. *Id.*

63. *Id.*

64. Telephone Interview with Marta Renthworth, INS, in Washington, D.C. (January 9, 2003) [hereafter *Interview INS*].

65. See 22 U.S.C. § 262k-2 (1996).

66. See 22 U.S.C. § 262k-2 (1996).

67. 22 U.S.C. § 262k-2 (1996).

United States has not used the statute to its potential.

In the summer of 2001 President Bush set a goal to disseminate grants to some of the poorest nations to "stop the debt."⁶⁸ President Bush categorizes these grants as money "for education, health, nutrition, potable water and sanitation."⁶⁹ This description allows Bush to circumvent 22 U.S.C § 262K-2.⁷⁰ President Bush has also stated that the grants will be used to allow the United States to promote "democratic government and the rule of law so that trade . . . can succeed."⁷¹ Might the grants be a pretext to bribe poor nations to embrace democracy and to increase trade with the United States?

Furthermore, President Bush's story changes constantly. In February 2002, Bush and the Office of Public Affairs declared that there were two themes for the grant development plan: productivity growth and measurable results.⁷² These themes do not promote basic human needs. The themes seem to be aimed more at making money than basic human rights, womens' rights and civil rights.

If a portion of the money is indeed spent protecting basic human rights, a country should be able to obtain loans. However, it is not true that all of the money given to Egypt for Foreign aid is for basic human

68. *Grants Agreement a Victory for Poor Nations*, Fact Sheet G7 IDA Agreement, From the Office of Public Affairs, June 17, 2002 available at <http://www.treas.gov/press/releases/po3177.htm> (last visited 11/20/02) [hereinafter *Grants Agreement*].

69. *Id.*

70. See 22 U.S.C. § 262k-2 (1996).

71. *Grants Agreement*, *supra* note 68.

72. Improving the Regional Development Banks by John B. Taylor under Secretary of Treasury for International Affairs Conference on Financing for Development Regional Challenge and the Regional Development Banks Institute for International Economics, from the Office of Public Affairs, February 19, 2002 available at <http://www.treas.gov/press/releases/po1032.htm> [hereinafter *Improving*] (last visited 11/20/02). Office of Public Affairs stated, "We have stressed two themes to guide the reform and to set priorities. The first them is productivity growth. A development strategy will be effective if and only if it raises the growth rate of productivity-the amount of goods or services that a worker can produce in a set period of time, such as a day or a year. It is nearly a tautology to say that countries are poor because productivity is low, and that countries are rich because productivity is high. But there are advantages of focusing on the importance of an economy where workers are employed in high productivity jobs.

The other theme we stress is measurable results. President Bush emphasizes the importance of being able to measure results in every activity of government, not only the operations of the development banks. By measuring results you can see if a given activity is actually making a difference. And if it is not making a difference then we should change and do something that works. For example, is an education loan or grant raising enrollment, test scores, or literacy? Are the funds really making a difference to children's skills to that their own productivity will increase once they are employed? How much of a difference? Compared to what other kind of educational activity?").

rights.⁷³ In 1999, the U.S. gave Egypt 2.93 billion dollars in grants and credits.⁷⁴ The grants are composed of "military supplies, and services

73. *U.S. Census Bureau, Statistical Abstract of United States: 2001*, p.783, available at <http://www.census.gov/prod/2002pubs/01statab/foreign.pdf> (last visited 1/19/03) [hereafter *Census*].

74. *Id.* at table No. 1292. U.S. Government Foreign Grants and Credits by Type and Country: 1966 to 1999. [In millions of dollars (70,381 represents \$70,381,000,000). See text, this section. Negative figures (-) occur when the total of grant returns, principal repayments, and/or foreign currencies disbursed by the U.S. government exceeds new grants and new credits utilized and/or acquisitions of foreign currencies through new sales of farm products]

Country	
Western Europe.	1,004 1,618 -5,408 177 197 390 317 428
Austria.	-19 34 -72 -1 -1 -1 (Z) -
Belgium and Luxembourg.	17 -46 -48 - - - -
Denmark.	64 -58 -13 - - - -
Finland.	-19 21 -72 -1 -1 -1 (Z) -
France.	-93 -222 -93 1 - (Z) - -
Germany.	-117 -117 -6,459 (Z) (Z) - - -
Iceland.	-8 -12 -8 - - - -
Ireland.	-51 7 5 - 11 39 8 -
Italy.	85 133 -233 (Z) - - - -
Netherlands.	116 -180 -2 - - - -
Norway.	379 -257 -33 - - - -
Portugal.	34 1,003 796 -16 -3 - 26 4
Spain.	607 965 -867 -59 -48 -37 -37 -28
Sweden.	17 -1 -15 - - - -
United Kingdom.	-546 -964 -1,465 -120 -125 -127 -130 -136
Yugoslavia.	84 174 -458 (X) -1 (X) -1 (X)
Former Yugoslavia 2:	
Bosnia and Hercegovina.	(X) (X) 268 94 161 311 236 188
Croatia.	(X) (X) 186 9 -10 -7 -11 1
Macedonia.	(X) (X) 73 1 3 18 7 20
Slovenia.	(X) (X) 71 -24 -27 -15 -15 2
Former Yugoslavia - Regional 3.	(X) (X) 22 (Z) 1 -8 8 21
Other 1 and unspecified 3.	455 1,139 3,007 293 236 220 229 355
Eastern Europe.	226 1,029 12,368 1,979 1,957 1,410 1,790 2,152
Albania.	- 173 15 58 11 16 4
Bulgaria.	- 93 6 13 14 14 26
Czechoslovakia.	- 5 17 -2 3 -11 (X) (X)
Czech Republic.	(X) (X) 7 3 10 5 5 8
Estonia.	(X) (X) 32 2 7 4 6 4
Hungary.	-5 6 42 36 15 -16 13 13
Latvia.	(X) (X) 35 2 10 4 8 9
Lithuania.	(X) (X) 96 28 17 23 15 4
Poland.	-75 1,017 3,491 6 50 29 38 24
Romania.	92 55 44 9 30 5 28 10
Slovakia.	(X) (X) 4 2 12 11 6 8
Soviet Union.	214 -44 -267 (X) (X) (X) (X) (X)
Newly Independent States:	

and other grants.”⁷⁵ The grants do not sound at all like they are for basic human rights.

III. Steps taken to Eradicate Female Genital Mutilation: Egypt

Estimated at 97% of the female population, Egypt has one of the highest prevalence rates of FGM in the world.⁷⁶ Although the procedure varies from region to region the most typical forms of FGM are type one

Armenia	(X) (X) 352 102 80 26 39 35
Azerbaijan.	(X) (X) 42 19 14 4 6 6
Belarus.	(X) (X) 237 50 31 19 3 6
Georgia	(X) (X) 285 89 79 38 28 23
Kazakhstan	(X) (X) 71 17 60 52 70 45
Kyrgyzstan	(X) (X) 175 33 38 26 30 15
Moldova	(X) (X) 85 19 15 8 5 32
Russia	(X) (X) 3,999 465 423 361 444 968
Tajikistan.	(X) (X) 94 34 32 27 30 6
Turkmenistan.	(X) (X) 73 16 19 1 3 3
Ukraine.	(X) (X) 353 171 233 97 172 318
Uzbekistan	(X) (X) 9 1 5 2 7 19
Former Soviet Union - Regional 3	(X) (X) 1,707 613 579 582 603 506
Other 2 and unspecified 3	(X) (X) 1,119 241 124 85 200 61
Near East and South Asia.	17,195 50,777 29,168 3,025 7,666 4,675 5,045 4,378
Afghanistan	185 56 403 10 14 17 - 2
Bangladesh	701 1,670 1,590 87 48 42 24 65
Cyprus.	20 138 151 6 11 10 14 -
Egypt.	2,093
Greece	905 362 2,774 261 12 -210 -240 -145
India	3,810 1,021 767 48 55 238 167 -79
Iran.	914 -847 -42 - -21 - - -
Iraq 4.	-5 5 892 128 119 11 - -
Israel.	3,760 25,417 25,116 420 5,294 2,896 2,842 2,221
Jordan.	618 1,320 754 129 168 279 217 186
Kuwait	- - -16,058 - - - - -
Lebanon.	90 233 22 5 11 3 2 9
Nepal	105 177 193 20 21 24 20 19
Oman	(Z) 79 42 4 12 26 20 -6
Pakistan.	2,048 1,971 1,222 -187 -164 -62 -82 79
Saudi Arabia	23 -20 -16,855 - - - - -
Sri Lanka	153 512 596 27 6 7 1 -6
Syria	15 262 3 - - - - -
Turkey	2,703 3,760 2,957 147 51 -129 -159 -259
United Arab Emirates	- - -4,070 - - - - -
Yemen (Sanaa)	3 (Z) (X) (X) (X) (X) (X) (X)
Yemen	24 216 89 3 5 12 5 10
UNRWA 5	296 596 622 103 72 59 78 93
West Bank-Gaza	11 13 162 58 33 53 80 88

(emphasis added)

75. *Census*, *supra* note 73.

76. *EPR*, *supra* note 11.

and type two.⁷⁷ Type three is still practiced, but only by a small percentage of the southern part of Egypt.⁷⁸ For years Egypt has struggled with the legal implications of FGM.⁷⁹ However, FGM has never been made illegal in Egypt.⁸⁰ Instead, the practice of FGM is uncontrollable, practiced by Christians and Muslims alike.⁸¹ The Egyptian Constitution offers many articles that condemn the mistreatment of women⁸², and provide equal rights under the law.⁸³ In addition the Egyptian Penal code provides provisions pertaining to the prohibition on "wounding."⁸⁴ However, FGM is never mentioned in the Penal Code directly and therefore it is hard to apply to cases because the procedure is seen as a custom rather torture.

The Egyptian government has made some attempts to eradicate the practice of FGM. According to Nahid Toubia, in personal communication with Amal Abd-El-Hadi, the Women's Program Coordinator for the Cairo Institute of Human Rights Studies,⁸⁵ "in 1994, the then Minister of Health, Dr. Ali Abdel Fattah, issued a decree banning the practice of FC/FGM outside of public hospitals. The decree required physicians to discourage parents from having their daughters undergo FC/FGM."⁸⁶ "If the parents insisted the procedure was to be performed,"⁸⁷ it must be "under the supervision of a doctor, in public medical hospitals."⁸⁸ Dr. Fattah's decree was not well received by many Egyptian citizens. The decree seemed to encourage parents to take their daughters to the hospital to have the procedure performed.⁸⁹ Fattah's decree allowed the practice to be an open torture, rather than a secret one. Although Fattah's decree eliminated many of the immediate health concerns from having FGM performed in a barn with a dull rusty razor blade, the problem remained that the practice was still legal.

In 1995, Fattah's decree was reversed. Instead Fattah issued a new

77. *Egypt: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)*, U.S. Department of State available at <http://www.state.gov/g/wi/rls/rep/crfgm/10096.htm>, (last visited 11/20/02) [hereinafter ERFGM]. (Type one involves the cutting of all or part of the clitoris; Type two involves the cutting of the clitoris with partial or total removal of the labia minora; Type three involves the cutting of all of the external genitalia and partial closure of the vagina.)

78. *Id.*

79. *Id.*

80. Toubia, *supra* note 2, 141.

81. ERFGM, *supra* note 58; Toubia, *supra* note 2, at 141.

82. Egypt Const. part III, art. 40.

83. *Id.* at part III, ch. I, art. 11.

84. Toubia, *supra* note 2, at 141.

85. Toubia, *supra* note 2, at fn. 2, 143.

86. *Id.*

87. Toubia, *supra*, note 2, at 142.

88. *See* Toubia, *supra* note 2, at 142.

89. *Id.*

decree banning doctors from “performing FC/FGM in public hospitals.”⁹⁰ However, Fattah’s new decree did not ban the practice of FGM in private clinics, which meant FGM was still not prohibited by law.⁹¹ Auspiciously, in 1996, a new Minister of Health, Dr. Ismael Sallam, was appointed. With his appointment came another decree that prohibited FGM for “nonmedical purposes.”⁹² The decree stated:

It is forbidden to perform circumcision on females either in hospitals or public or private clinics. The procedure can only be performed in cases of disease and when approved by the head of obstetrics and gynecology department at the hospital, and upon the suggestion of the treating physician. Performance of this operation will be considered a violation of the laws governing the medical profession. Nor is this operation to be performed by non-physicians.⁹³

Dr. Sallam’s decree frightened a lot of people, including physicians, who were concerned that the prohibition of FGM might lead to the “back alley” operations that were being performed before. The argument against the decree was similar to the abortion debate in the United States. Those who supported *Roe v. Wade* argued that if abortion were made illegal, women would continue to have abortions, only they would be performed in back alleys and by non-medical personnel. Many Egyptian people challenged the decree and the decree was taken to the courts to test its validity.⁹⁴ The court declared the decree unconstitutional.⁹⁵ The court stated that the decree was unconstitutional “for infringing upon parliamentary functions and for interfering with the right of physicians to perform surgery.”⁹⁶ Fortunately, in 1997, Egypt’s highest court reversed the lower court’s ruling.⁹⁷ The court ruled “Islam does not sanction FC/FGM and that the practice is punishable under the Penal Code.”⁹⁸ However, the court failed to mention where in the Egyptian Penal Code FGM has been declared illegal.⁹⁹

90. *Id.*

91. *Id.*

92. *Id.*

93. *Toubia, supra* note 2, 142.

94. *Id.*

95. *Id.*

96. *Toubia, supra* note 2, at 142-143 n.11.

97. *Id.* at 142.

98. *Id.* The court held

With this ruling everybody is banned from performing [female circumcision], even with the proven consent of the girl or her parents, except in cases of medical necessity, which must be determined by the director of the gynecology department in one of the hospitals. Otherwise, all those who do not comply will be subjected to criminal and administrative punishments.

99. *Toubia, supra* note 2, at 142.

A. *Using the Egyptian Constitution to Fight FGM*

Although there are not specific laws prohibiting the practice of FGM, Egypt's Constitution has many provisions that may help in the fight to eradicate FGM.¹⁰⁰ The first section of the Egyptian Constitution that may protect females and female children is Chapter 1, Article 10.¹⁰¹ Article 10 states that "The State shall guarantee the protection of motherhood and childhood, look after children and youth and provide the suitable conditions for the development of their talents."¹⁰² This provision can be used to argue that all young females are protected against the undue hardship of FGM.¹⁰³ In addition Article 10 can be used to argue that children are allowed a childhood free of interference or mutilation by their parents.¹⁰⁴

The Egyptian Constitution also has an equal protection provision that could be helpful in applying other areas of the Constitution.¹⁰⁵ Article 40 states, "All citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed."¹⁰⁶ Using the equal protection article, women in Egypt have the power to apply any section or article of the Constitution to themselves.¹⁰⁷

The Egyptian Constitution has a very powerful provision that should be used in every case of FGM. Article 57 states, "Any assault on individual freedom or on the inviolability of the private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription."¹⁰⁸ Women in Egypt could use this provision to claim that FGM is a personal assault on their individual freedom as citizens of Egypt.¹⁰⁹ Over and over again horrendous descriptions of forced FGM are told by women all over the world. Assault, in the American justice system, has come to be understood as, "The threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact."¹¹⁰ When we apply this definition to FGM, many of the procedures that are

100. See Egypt Const.

101. See Egypt Const. pt. I, ch. I, art. 10.

102. *Id.*

103. See *id.*

104. See *id.*

105. See Egypt Const. pt. III, ch. II, art. 40.

106. *Id.*

107. See *id.*

108. Egypt Const. pt. III, ch. II, art. 57.

109. See *id.*

110. BLACK'S LAW DICTIONARY 109 (7th ed. 1999).

performed can be considered assaults. Like the personal account of Hannah Koroma, written about earlier, many women do not know what is happening to them when they are taken to be cut.¹¹¹ Many women, like Hannah Koroma, would opt not to have the procedure performed on them, if given the choice. Therefore, using article 57 of the Egyptian Constitution to bring a suit against a perpetrator of FGM would escalate the response of Egypt to FGM in general. However, this has yet to be done.

Although there are many ways to fight FGM, using the Constitution, there are also some sections of the Constitution that would hurt the chances of winning such a suit. Article 9 is a hurdle that must be jumped in order to bring a suit against FGM.¹¹² Article 9 states that, "The State is . . . to preserve the genuine character of the Egyptian family—with all values and traditions represented by it."¹¹³ This article could be used to justify FGM as a traditional practice in Egyptian society. Because the practice dates back to the early B.C.'s, the Egyptian government could argue that FGM has very deep roots in the "character of the Egyptian family."¹¹⁴

Along the same lines as article 9, article 12 also stands to block a constitutional attack on FGM because it also discusses the Egyptian views on traditional family values.¹¹⁵ Article 12 states, "Society shall be committed to safeguarding and protecting, morals, promoting the genuine Egyptian traditions. . . ."¹¹⁶ Interpreted plainly, this means that the Egyptian government will go to zealous lengths to protect its peoples' traditions.¹¹⁷ Again, FGM arguably could be construed to be a traditional Egyptian practice, and therefore would be protected by the Constitution.

111. *Koroma, supra* note 9.

112. *See* Egypt Const. pt. II, ch. II, art. 9. "The family is the basis of the society founded on religion, morality and patriotism. The State is keen to preserve the genuine character of the Egyptian family—with all values and traditions represented by it—while affirming and promoting this character in the interplay of relations within the Egyptian society."

113. *Id.*

114. *Id.*

115. Egypt Const. pt. II, ch. I, art. 12.

116. *Id.* "Society shall be committed to safeguarding and protecting morals, promoting the genuine Egyptian traditions and abiding by the high standards of religious education, moral and national values, historical heritage of the people, scientific facts, socialist conduct and public manners within the limits of the law. The State is committed to abiding by these principles and promoting them."

117. *See id.*

B. Educational Programs in Egypt and their effect on the prevalence of FGM

As in other countries, FGM has always been a very delicate topic in Egypt because the practice has been instilled into the minds of Egyptian citizens over centuries. However, there are certain international organizations that have taken it upon themselves to develop FGM educational programs for Egyptian citizens.¹¹⁸

One such organization is the Coptic Evangelical Organization for Social Services (CEOSS).¹¹⁹ CEOSS organized in Egypt during the 1950's.¹²⁰ When CEOSS first began its social work in Egypt, programs mainly focused around literacy.¹²¹ However, over the past fifty years the organization has turned its focus toward educating Egyptian citizens not only in reading and writing, but also in agriculture, health and their economy.¹²² In 1990 CEOSS began an educational crusade against FGM on a small scale; they began by going village to village and began "development programs aimed at both raising the standard of living . . . and at addressing a number of issues"¹²³ including FGM.¹²⁴ In 1998 CEOSS had managed to greatly reduce the number of cases of FGM in eight villages.¹²⁵

The anti-circumcision program mobilizes a network of volunteers from the villages responsible for educating their communities. Financial assistance to the CEOSS program was provided by American, European and the United Nations aid agencies. The Organization introduces their program into a community only after receiving an officially signed letter from village leaders. Then, a team of two is assigned to live in the village to train local volunteers and launch the organization developmental program, which focuses on illiteracy, family planning, and health care. The trained volunteers are responsible for soliciting pledges from the villagers, which explicitly stated that they will not carry out the practice on their daughters. In addition, the program volunteers conduct follow-up visits to ensure that the daughters are not circumcised. Ultimately, the volunteers are expected to ensure the sustainability of the

118. EQUALITY NOW: AWAKEN 3-6. (Rana S. Badri ed., 1998).

119. *Id.*

120. The Coptic Evangelical Organization for Social Services *available at* <http://www.churchworldservice.org/index.html> (last visited 4/3/04) [hereafter *CEOSS*].

121. *Id.*

122. *Id.*

123. EQUALITY NOW: AWAKEN 3-6. (Rana S. Badri ed., 1998).

124. *CEOSS, supra* note 121.

125. EQUALITY NOW: AWAKEN 3-6. (Rana S. Badri ed., 1998).

program after the organization leaves the village.¹²⁶

The account of CEOSS's program is important because it illustrates the amount of time and effort that must be put into eradicating FGM. Although CEOSS is a religious based program, the organization never discriminates based on religion or forces Christianity upon Egyptian citizens.¹²⁷ The organization instead focuses its energy on stamping out practices, such as FGM, that violate the rights of Egyptian citizens.¹²⁸

IV. Forging Ahead: Future Steps that must be taken to eradicate FGM

A. *The United States*

Although the United States has taken it upon themselves to criminalize FGM, other steps must be taken in order to educate and wipe out FGM from the U.S.'s borders. Many of the laws that have been enacted are hallow. Hallow in the sense that the laws seem to have been either forgotten about completely, or the enforcement of them is rare or impossible.

To begin, there is a very important bill that will put to a vote during the 2003 legislative term. Last July, the Committee on Energy and Commerce submitted a bill to the House of Representatives creating an Office of Women's Health.¹²⁹ This bill, if passed, would create an office that is totally devoted towards monitoring, researching, and "facilitating the exchange of information regarding matters relating to information, health promotion, preventive health services, research advances, [and] education in the appropriate use of health care"¹³⁰ to women all over the United States.

In addition to facilitating information to women in the United States, the Office of Women's Health could act as a catalyst in activating many of the statutes enacted dealing with FGM.¹³¹ For example, all of the provisions of § 242 have not yet been carried out.¹³² As stated earlier, Hershey Medical Center has yet to receive any recommendations or information from the Department of Health discussing FGM and the complications of the procedure.¹³³ This is unacceptable. It has been

126. *Id.*

127. *CEOSS, supra* note 121.

128. *Id.*

129. H.R. 107-616 (2002).

130. *Id.*

131. *Id.* Because the Office of Women's health would focus primarily around women's health, the office will be able to center their goals on women's issues.

132. 42 U.S.C. § 241 (1996); *Interview, supra* n.43.

133. *Interview, supra* note 46.

seven years since § 241 was passed. Plenty of time has been provided for the Department of Health to disseminate the information mandated in § 241.¹³⁴

The Office of Women's Health would also have its own budget to work with, ensuring that the proper programs are implemented with enough funding to keep them functioning.¹³⁵ Under the bill, the Secretary of the Office of Women's Health would have the power to "make grants and enter into cooperative agreements, contracts, and interagency agreements with public and private entities, agencies, and organizations."¹³⁶ This power would give the Office of Women's Health the opportunity to implement educational programs on FGM, working hand-in-hand with private organizations.¹³⁷ Since many private organizations have been educating women on FGM by using their own personal resources, the creation of the Office of Women's Health would allow the private and public organizations to combine their efforts in the fight to eradicate FGM from the U.S.'s borders.

The second step in firming up the U.S.'s policies on FGM is to change the way in which the Department of Justice distributes the Notice to incoming immigrants. During an interview with the INS's Marta Renthworth, she stated that the Notice is given out to anybody coming into the U.S., on an immigrant or non-immigrant visa, in a packet of information containing any information immigrants might need.¹³⁸ However, the way this Notice is distributed can be seen as a passive approach to educating women and families who come to the U.S. How often is the Notice read? How often is it just thrown away? How often is the Notice disregarded by immigrants who merely feel it is a form of ethnocentrism. There needs to be a better policy of distributing the information. The Department of Justice has already identified the countries in which FGM is prevalent.¹³⁹ The next step would be to create a special educational program for incoming immigrants, which they would be required to attend, to educate them on the health and psychological side affects of FGM.

The U.S. must also fix the loop holes that exist in § 262k-2, the international financial institution section.¹⁴⁰ Further, Section 262k-2 needs to be used as a bargaining agreement when loans are given out by

134. See 42 U.S.C. § 241 (1996).

135. H.R. 107-616 (2002).

136. *Id.*

137. TAHIRIH JUSTICE CENTER: ANNUAL REPORT 200 & 2001 *available at* www.TAHIRIH.ORG (last visited 1/10/02).

138. Telephone Interview with Marta Renthworth, INS, in Washington, D.C. (January 9, 2003) [hereafter *Interview INS*].

139. 63 F.R. 13433 (1998).

140. 22 U.S.C. § 262k-2 (1996).

the U.S. As it stands right now, almost any loan can be given for any reason without any consequences. By qualifying a loan as for "basic human needs" the U.S. can disregard the statute without blinking an eye.¹⁴¹ Whether it be redrafting the statute, or actually owning up to the real reason for the loan, Congress and the President need to take responsibility for the role they have chosen as protectors of basic human rights.

Finally, the U.S. must enforce their criminalization of FGM.¹⁴² While other countries have prosecuted perpetrators and parents for performing FGM,¹⁴³ or having the procedure performed upon their daughters, the U.S. has stood idly by and never prosecuted a single person.¹⁴⁴

B. Egypt

Although Egypt and many international organizations have implemented educational programs to alert Egyptian citizens to the complications that arise from FGM, Egypt has yet to criminalize the procedure.¹⁴⁵ The first step, of course, is for the Egyptian Parliament to pass a law prohibiting FGM altogether. With the passage of the law would then come the enforcement of the law. Because FGM has such a long history in Egypt, enforcement is key. If the law is not enforced, it is as good as not having a law.

Egypt could also organize its government in a way, such that a committee or office should be developed around Women's health in general. Like the proposed bill in the U.S., if an Egyptian Office of Women's Health was developed, the office could focus more on women's rights and women's health and possibly reduce the plight many women face on a day to day basis.

V. Conclusion: Is there an end in sight?

Egypt and the U.S. are two very different countries. Nevertheless, they are both fighting a single battle to eliminate Female Genital Mutilation. Each country has approached the topic of FGM in a very different ways.

The United States has outlawed the procedure in all fifty states.¹⁴⁶

141. *Id.*

142. 18 U.S.C. § 116 (1996).

143. Hermine Fuerst-Garcia, *Mariatou and Her Sisters: The Story behind a Precedent-Setting Court Case* (on file with author).

144. *Toubia*, *supra* note 2, at 237.

145. *Toubia*, *supra* note 2, at 141.

146. 18 U.S.C. § 116 (1996).

The U.S. has set up programs, through the INS, to try to educate those immigrants seeking temporary or permanent visas into the U.S.¹⁴⁷ The U.S. has also tried to implement programs that will disseminate information to medical personnel and medical students.¹⁴⁸ However, despite these efforts, FGM still remains a significant problem in the United States. Until policy changes can be made, including revising how grants and loans are dispersed¹⁴⁹ to foreign countries, FGM will remain an open wound on the U.S.'s domestic and foreign policy. The U.S. must implement educational programs, if they stand a chance in the battle to eradicate FGM from its borders and around the world.

Egypt, although behind the U.S. in banning FGM, has made some small steps towards the education of its people on the health and emotional damages of FGM.¹⁵⁰ Many international and local groups have taken it upon themselves to execute essential educational programs to change the course of FGM in Egypt.¹⁵¹ Only with the combination of these groups' efforts, and a united front from the Egyptian Parliament, does Egypt stand a chance in the war to eradicate FGM from its borders.

147. 63 F.R. 13433 (1998).

148. 42 U.S.C. § 241 (1996).

149. 22 U.S.C. § 262-2k (1996).

150. *EQUALITY NOW: AWAKEN* 3-6. (Rana S. Badri ed., 1998).

151. *CEOSS*, *supra* note 121.

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